

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
EUGENE AND DAYMEL SHKLAR)	
FOUNDATION,)	
)	
Plaintiff,)	
v.)	C.A. No. 04-CV-11529-JLT
)	
IAN SIMMONS,)	
)	
Defendant.)	
_____)	

JOINT STATEMENT OF THE PARTIES PURSUANT TO LOCAL RULE 16.1(D)

Plaintiff Eugene and Daymel Shklar Foundation (the “Foundation”) and defendant Ian Simmons (“Simmons”), hereby submit their Joint Statement, as required by this Court’s Local Rule 16.1(D), in advance of the Initial Scheduling Conference to take place in this matter on December 7, 2004.

I. CONCISE SUMMARY OF THE POSITIONS ASSERTED BY THE PARTIES

This lawsuit arises out of real estate dispute between the Foundation, owner of real property located at 3 Bow Street in Cambridge, Massachusetts (the “Property”), and Simmons. On September 27, 2003, Simmons signed an offer to purchase the Property for \$7.2 million; that offer was accepted by the Foundation.

The deal to purchase the Property collapsed and the Property was eventually sold to a third party for \$6.9 million. The Foundation claims that the offer, along with a promissory note subsequently signed by Simmons, are binding contracts under which Simmons owes the

Foundation \$300,000 so far.¹ The Foundation claims additional damages based on the cost of improvements (amounting to approximately \$70,000) the Foundation made to the Property at the request of Simmons, lost rent due to the Foundation having to keep the Property vacant after entering into the agreement to sell the property to Simmons, and other expenses, including legal fees, incurred in furtherance of the sale of the Property to Simmons. The plaintiff further claims that the defendant's actions constituted fraud and a violation of M.G.L. c. 93A, § 11.

Simmons asserts that neither the offer nor the promissory note are binding contracts because their enforceability is premised upon the execution of a purchase and sale agreement and that such an agreement was never signed by the parties. Simmons further asserts that he was induced, based on misleading information, to sign the offer and promissory note. Simmons therefore denies that he breached a contract with the plaintiff, committed fraud, or violated M.G.L. c. 93A, § 11.

II. JOINT DISCOVERY PLAN AND PROPOSED SCHEDULE FOR FILING MOTIONS

The parties jointly submit the following proposed discovery plan and schedule for filing motions:

<u>Event</u>	<u>Proposed Deadline</u>
Completion of Written Discovery (Requests for Production and Interrogatories)	April 7, 2005
Completion of Depositions of Factual Witnesses and Requests for Admission (if any)	September 7, 2005
Summary Judgment Motion(s) Served	October 19, 2005
Summary Judgment Opposition(s) Served	November 30, 2005

¹ The Foundation claims that, under the terms of a promissory note executed by Mr. Simmons, a final \$60,000 payment will be due and owing to the Foundation on December 15, 2004. Simmons has yet to make any payment under this Note.

Expert Witness Discovery and Depositions

Within 60 days of issuance of
Decision(s) on summary
judgment motion(s)

Final Pretrial Conference

90 days after the issuance of
decision(s) on summary
judgment motion(s)

III. TRIAL BEFORE A UNITED STATES MAGISTRATE JUDGE

The parties do not consent to a trial of this matter before a United States Magistrate Judge.

IV. CERTIFICATIONS BY PARTIES AND THEIR COUNSEL

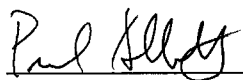
Appended hereto as Exhibits A and B are the parties certifications, signed by counsel and an authorized representative of each party, affirming that the parties' counsel and the parties have conferred (a) with a view to establishing a budget and (b) with respect to resolution of the matter through some form of alternative dispute resolution.

EUGENE AND DAYMEL SHKLAR
FOUNDATION,

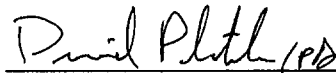
IAN SIMMONS,

By its attorneys,

By his attorneys,



Paul D. Wilson, BBO # 529950
Paul D. Abbott, BBO #652233
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000 (phone)
(617) 542-2241 (fax)



William A. Worth, BBO # 544086
David E. Plotkin, BBO # 644858
Prince, Lobel, Glovsky & Tye, LLP
585 Commercial Street
Boston, MA 02109
(617) 456-8000 (phone)
(617) 456-8100 (fax)